

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6193**

**BILL NUMBER: SB 45**

**NOTE PREPARED:** May 7, 2007

**BILL AMENDED:** Apr 29, 2007

**SUBJECT:** Judicial Discretion and Sexually Violent Predators.

**FIRST AUTHOR:** Sen. Bray

**FIRST SPONSOR:** Rep. L. Lawson

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** *Amendment of Indictment or Information:* The bill provides that an indictment or information may be amended at any time before the commencement of trial when the amendment does not prejudice the substantial rights of the defendant.

*Sentencing Statement:* The bill requires a court to issue a sentencing statement after the court has pronounced a sentence for a felony conviction.

*Advisory Sentence:* It provides that a court is not required to use an advisory sentence in imposing consecutive sentences for felony convictions that are not crimes of violence arising out of an episode of criminal conduct.

*Battery by Body Waste:* The bill makes it battery by body waste, a Class D felony, for a person to knowingly or intentionally in a rude, insolent, or angry manner place blood or another body fluid or waste on a probation officer, firefighter, or first responder (in addition to other law enforcement officers or corrections officers) while the victim is engaged in the performance of official duties. It enhances the penalties for committing battery by body waste if the body waste is infected with hepatitis C. (Current law enhances the penalty if the body waste is infected with hepatitis B, HIV, or tuberculosis.)

(The introduced version of this bill was prepared by the Sentencing Policy Study Committee.)

**Effective Date:** Upon passage; July 1, 2007.

**Explanation of State Expenditures:** *Advisory Sentence:* The bill would allow the court more discretion in

determining the length of subsequent sentences when the sentences are for felony convictions that do not arise out of an episode of criminal conduct. It also specifies that in imposing a consecutive sentence for felony convictions that are not crimes of violence and that arise out of an episode of criminal conduct, the court is required to use the advisory sentence (midpoint between the range maximum and minimum). The longer the length of sentence, the longer an offender will serve in a state correctional facility. Ultimately, the fiscal impact of these changes will be based on the decisions of the court in determining the length of the sentence or by using the advisory sentence.

*Background on Consecutive Sentences:* The following table developed from Department of Correction CY 2006 admission data provides information on the number of sentences affected by the changes in the bill.

<b>*Number of offenders admitted with multiple felony convictions ...</b>	<b>Court Action Under the Bill</b>	<b>Number / Percentage of Total Admissions**</b>
...that do not arise out of an episode of criminal conduct	Court is not required to use advisory sentence.	1,789 / 12.7%
...that arise out of an episode of criminal conduct, but are not crimes of violence***	Court is required to use the advisory sentence.	1,778 / 12.6%
*Number is based on the cause number for each felony offense, assuming that identical cause number on multiple sentences indicates the sentences arose out of a single episode of criminal conduct. **Total Admissions in CY 2006 were 14,089. ***Crimes of violence as defined in IC 35-50-1-2(a).		

*Battery by Body Waste:* There are no data available to indicate if the addition of probation officers, firefighters, or first responders to the victims of the crime would increase the number of people convicted of battery by body waste, a Class D felony. Also, there are no data available to indicate if more people would be convicted of the Class B, C, or D felony of battery by body waste if hepatitis C is added to the definitions of the crimes.

Between 2001 and 2005, on average, there were 2 offenders committed to a state correctional facility a year for the Class C offense and 37 offenders a year committed for the Class D felony. In the same time period, there were 2 offenders total committed for the Class B felony.

Depending upon mitigating and aggravating circumstances, a Class B felony is punishable by a prison term ranging from 6 to 20 years, a Class C felony is punishable by a prison term ranging from 2 to 8 years, and a Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in Department of Correction (DOC) facilities for all Class B felony offenders is approximately 3.7 years, for all Class C felony offenders is approximately 2 years, and for all Class D felony offenders is approximately 10 months.

**Explanation of State Revenues:** *Battery by Body Waste:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class B, C, or D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

**Explanation of Local Expenditures:** *Battery by Body Waste:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

**Explanation of Local Revenues:** *Battery by Body Waste:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:**

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